53D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1818.

CHARLES H. ADAMS.

FEBRUARY 12, 1895.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MAHON, from the Committee on War Claims, submitted the following

REPORT:

[To accompany H. R. 2725.]

The Committee on War Claims, to whom was referred the bill (H. R. 2725) for the relief of Charles H. Adams, submit the following report:

A similar bill was before the Committee on War Claims of the Fifty-first Congress, and was favorably reported upon. After a careful investigation of the facts involved, your committee adopt the report of the Fifty-first Congress, a copy thereof being hereto attached and made a part of this report, and recommend that the bill do pass.

Your committee attach to their report the acts of Congress concerning contracts and the decision of the courts in relation to the same, and ask that it be printed as an appendix of this report.

APPENDIX.

[House Report No. 3643, Fifty-first Congress, second session.]

The Committee on War Claims, to whom was referred the bill (H. R. 12332) for the relief of Charles H. Adams, have considered the same, and submit the following report:

The facts in regard to this claim are substantially as follows:

At the time the claim originated, Gen. Robert Allen was chief quartermaster for the Valley of the Mississippi, with headquarters at Louisville, Ky.; Col. William Myers was chief quartermaster for the department of the Missouri, with headquarters at St. Louis, Mo.; Capt. William Currie was an assistant quartermaster, under Colonel Myers, at St. Louis, and had charge of purchasing all forage for the use of the Army; Capt. Patrick Flanigan was also an assistant quartermaster, under Colonel Myers, stationed at Cairo, Ill.

The Illinois Central Railroad was then under the control of the military authorities and subject to the military orders in the transportation of stores and supplies for the Army, and was paid by the Government for all property belonging to the Government transported over said road at certain fixed rates, which were two-thirds of the rates charged private property transported.

The act of March 2, 1861 (12 Stat., 220), provided that when public exigency required forage or other stores or supplies for the use of the Army or Navy, the proper officer was authorized to purchase or contract for them at the places and in the same manner in which such articles were usually bought and sold between individuals, without advertising for proposals.

The act of July 4, 1864 (13 Stat., 394), established in the Quartermaster's Department nine divisions, to be placed in charge of officers of the Department.

The fifth division was charged with the purchase, procurement, issue, and disposition of forage and straw for the Army.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The fourth division was to have charge of all transportation by land and Western rivers, including all railroad and telegraph lines operated by the United States for military purposes.

Said act further provided that the heads of divisions should advertise for proposals for supplies needed, and that such supplies so purchased or contracted for should be subject to inspection.

The quartermaster-general was directed to establish depots for the principal armies in the field for receiving and distributing the supplies necessary, but such supplies might be sent from the place of purchase directly to the quartermaster in cases where it was more economical so to do.

Said act further provided that when an emergency existed requiring immediate procurement of supplies for an army or detachment, the chief quartermaster of the department was authorized to procure them in the most expeditious manner, without advertising for proposals.

This latter act did not change or conflict with the provisions of the act of March 2, 1861, authorizing the purchasing or contracting for of supplies in open market in cases of public exigency, in the same manner as such supplies were bought, sold, and inspected, between individuals.

The construction given these laws by the Quartermaster's Department officers was to advertise for proposals for such quantities of forage as they estimated would be necessary, but, if they found that they needed more than was contracted for, they purchased, or contracted for, such additional quantity as was needed in open market upon the basis of the prices named in the proposals that had been accepted under the advertisements for bids.

On March 28, 1865, Captain Currie, by order of Colonel Myers, purchased from the claimant 18,000 bushels of corn, then stored at Manteno, Ill., to be delivered at Cairo, at and for the price of $\$1.44\frac{8}{10}$ per bushel, and thereupon sent the following order to the freight agent of the Illinois Central Railroad Company:

ASSISTANT QUARTERMASTER'S OFFICE, FORAGE DEPARTMENT,
St. Louis, Mo., March 28, 1865.

Mr. ROBERT FORSYTHE,
General Freight Agent Illinois Central Railroad:

SIR: I have this day purchased of Mr. C. H. Adams 18,000 bushels of corn, to be delivered at Cairo, Ill., as soon as possible, "sending freight bills to this office." Said corn will be shipped from Manteno, Ill.

Respectfully,
WM. CURRIE,
Captain and Assistant Quartermaster.

By order of Col. William Myers, Chief Quartermaster, Department of Missouri.

Upon the presentation of this order to the officers of the railroad company they refused to furnish transportation for said corn for the reason that said order implied that the corn was the private property of Mr. Adams until it was delivered at Cairo, and they had orders from General Allen, through Colonel Myers, not to ship anything to Cairo except upon the orders of Colonel Myers directing shipment.

Finding that he could not obtain transportation for the corn, Mr. Adams went to St. Louis and reported the facts to Colonel Myers and Captain Currie.

They then entered into a new agreement, whereby Captain Currie, by order of Colonel Myers, made an actual purchase of the corn, to be delivered on board the cars at Manteno, at $1.30 per bushel.

The following order was then sent to the superintendent of the said railroad, to wit:

ASSISTANT QUARTERMASTER'S OFFICE, FORAGE DEPARTMENT,
St. Louis, Mo., April 15, 1865.

Mr. WM. R. ARTHUR,
Superintendent Illinois Central Railroad, Chicago, Ill.

SIR: I have purchased of C. H. Adams, at Manteno, Ill., for the use of the United States Government, 18,000 bushels of corn, which I wish you to deliver at Cairo, Ill., as soon as possible.

Please furnish transportation at once, and oblige,

Your obedient servant,
WM. CURRIE,
Captain and Assistant Quartermaster.

By order Col. Wm. Myers, chief quartermaster, Department of Missouri.
Approved for transportation.

WM. MYERS,
Colonel and Quartermaster.

The corn was then duly inspected by Thomas Porter, grain inspector for the Chicago Board of Trade, and found to be "good, sound, merchantable" corn, "better than the average;" and thereupon it was duly delivered by said Adams to the freight agent of said road, on board of the cars at Manteno, as follows:

April 22, 1865, 13 car loads, 2,203 sacks, 264,065 pounds.
April 24, 1865, 7 car loads, 1,149 sacks, 140,125 pounds.
April 25, 1865, 10 car loads, 1,700 sacks, 201,985 pounds.
Between April 25 and 29, 1865, 17 car loads, 2,929 sacks, 341,457 pounds.
Amounting in all to 18,002 bushels and 20 pounds.

The evidence is positive that all of the corn was in good condition and sound when delivered to the railroad agents at Manteno; that they shipped it as Government property, and not as belonging to the claimant after he delivered it to them; that it was shipped at once to Cairo as Government freight; and the United States paid the freight bills.

The agents of the railroad, who were, at that time, also the agents of the Government, acting under the orders and in the control of the quartermaster department, received the corn at Manteno as Government property, and shipped it from there to Cairo, consigned to the quartermaster there, on the dates hereinbefore named. According to the testimony of Robert Forsythe, the general freight agent of the railroad, each lot shipped arrived at Cairo in from two to two and one-half days from the dates of shipment. The first lot must have arrived at Cairo on April 24, the second on April 26, the third on April 27, and the balance between the 27th and 31st of April.

Upon the arrival of these various lots of corn, the cars were switched off on the side tracks, unloaded, and the corn became exposed to the inclemency of the weather, which had turned warm and rainy. It does not appear that any inspection was made at Cairo until May 17, when Inspector Porter, as he testified, again inspected it, finding part of it in the Government warehouse and the balance in the cars on the side tracks. He states he found some of it in good condition, but rapidly spoiling, and could then be saved by opening out and exposing it to the air.

But Captain Flanigan neglected to take any steps to protect the corn, yet kept possession of it.

The corn remained partly stored in the Government warehouse and partly elsewhere, until about the middle of June following, when Captain Currie, by order of General Allen, reshipped about 6,000 bushels of the corn to St. Louis as Government freight, consigned to Captain Currie. About 1,600 bushels of this lot were used in feeding Government animals, and the rest became worthless.

In the latter part of June, 1865, Captain Currie offered to pay Adams for 1,600 bushels, said to have been used, upon the condition that he would release all claim upon the Government for the balance of the corn purchased. This proposition was refused by Adams, and thereupon all payment was refused.

From the time Adams delivered the corn at Manteno he never had any control over it. From that date on it was solely in the possession and under the control of the Government agents, and all the damage and loss occurred while thus possessed and controlled.

Finding that he could get no pay Adams brought suit in the Court of Claims for the entire 18,000 bushels delivered at Manteno, claiming that purchase, inspection, and delivery at Manteno was a completed contract, and that he was entitled to pay for the full amount there delivered.

The testimony in his behalf was substantially as hereinbefore stated.

For the defense Captain Currie testified that his order of April 15, 1865, to the railroad company was for the purpose of obtaining transportation and that it expressly stipulated that the corn was to be subject to weight and inspection at Cairo; that he never purchased any forage except upon weight and inspection at place of delivery; that a portion of the corn was shipped to him at St. Louis, of which he used about 1,600 bushels; that it was shipped there on a Memphis packet, but he did not know who paid the freight, nor whether or not it was shipped as Government freight; that he may have ordered it shipped to St. Louis as Government corn; that the quartermaster department sometimes allowed parties to put in grain at contract prices when there was a demand for more than they had contracted for, and if there had been no such demand at the time, the order would not have been given; that he also purchased forage from others than Adams during the months of April, May, and June, 1865, without advertising, but at the contract prices for said months.

Captain Flanigan testified that all corn received at Cairo was inspected under his supervision, by a civilian named James Garvey; that some time in April, 1865, he was informed by Colonel Myers that he had authorized Colonel Adams to deliver about 20,000 bushels of corn at Cairo, and to give Colonel Adams all the facilities he could; that upon his request Adams sent him the numbers of the cars, which he gave to his inspector with instructions to have them inspected immediately after

arrival; the inspector rejected part of the corn; the cars were then shoved down on the side tracks, and nothing further was done with the corn; the corn was inspected "I might say within a day or two" after its arrival there; that his instructions were to inspect all corn purchased in that part of the country, and that all such purchases were subject to inspection at Cairo; that he had no different order in regard to this corn; that he afterwards, by order of Colonel Myers, shipped part of the corn to St. Louis, which, he thought, was to save Colonel Adams as much as possible from loss; that he did not know who paid the freight to St. Louis; that he did not remember when the cars and corn arrived at Cairo; that "it is possible that cars about that time may have remained several days without being inspected," but if so, it was because the railroad company failed to give him the number; that it was only a few days after the corn had been rejected that Adams called on him.

Upon the trial of the case the majority of the Court of Claims (7 C. C. Reports, 437) held as follows:

"DRAKE, Ch. J., delivers the opinion of the court:

"Upon the foregoing facts the court announces the conclusions of law to be that the claimant is entitled to recover for no more than the 1,600 bushels of corn used in St. Louis.

"The contract under which the 18,000 bushels were shipped from Manteno to Cairo was a parol contract between an assistant quartermaster and the claimant, entered into without previous advertisement, without any exigency declared by the commanding officer of the army or detachment with which the assistant quartermaster was connected, and without any authority from such commanding officer, and was not reduced to writing and signed by the parties as the law requires. Such a contract is void, as has been repeatedly held by this court.

"But we have also repeatedly held, he who delivers supplies to the Government under an executory contract, which, as such, is void, is entitled to pay for so much of the supplies as the Government receives and uses.

"It is, therefore, the judgment of the court that the claimant recover for the said 1,600 bushels of corn at $1.30 per bushel, making in the aggregate $2,080.

"NOTT, J., dissenting:

"There had been a contract between the parties, which broke down because the claimant was unable to perform. The reason of his inability was that the Illinois Central Railroad, which the defendants controlled, would not at the time carry private freight. The claimant went to the contracting quartermaster and told him, whereupon they made a new contract, which is the contract in suit.

"This new contract stands expressed partly in the words of a witness and partly in a written order from the quartermaster to the defendants' transportation agent, the Illinois Central Railroad. The words of the witness, that is to say, the conversation of the parties, did not, of themselves, make a contract, but the deficiency was filled by the written order, which was a part of the transaction, and was given to the claimant with the intent that he should act upon it, and with regard to which both parties did act.

"This contract, in part consisting of conversation and in part reduced to writing, was for the sale and delivery of 18,000 bushels of corn at Manteno, Ill., subject, nevertheless, to weight and inspection by the receiving officer of the Quartermaster Department, on arrival at Cairo. 'I have purchased of C. H. Adams' are the words of the written order, 'at Manteno, Ill., for the use of the United States Government, 18,000 bushels of corn, which I wish you to deliver at Cairo.'

"The claimant acted on its terms and delivered the corn at Manteno; the Illinois Central Railroad acted on its terms and received the freight; the defendants acted on its terms and paid the railroad company for the transportation. The written order was not addressed to the contractor, but was delivered to him with the intent that he should act upon it, and he did so act. It being a part of the transaction, was a part of the agreement.

"The facts as they are found in this case are not ultimate facts in the nature of a special verdict to which a court can apply the law, but circumstantial evidence from which a jury must deduce ultimate facts. As I deduce them they are these:

"(1) The corn was delivered at Manteno under and in pursuance of the written order, and was in good sound merchantable condition.

"(2) The railroad company received and accepted the corn under and in pursuance of the written order, and transported it to Cairo, and the contractor exercised no care or control over it after its delivery at Manteno.

"(3) The corn was spoiled while *in transitu*, but chiefly after its arrival at Cairo, and the cause of the loss was the excessive heat of the weather, coupled with the fact that the corn was left on board of the cars, which, amid the circumstances, constituted an exposed and dangerous situation.

"(4) The corn might have been saved if it had been promptly and properly cared for on its arrival at Cairo, but the defendants' receiving officer there took no steps toward saving it, nor did he notify the contractor of its exposed condition.

"From these facts I draw the following conclusions of law:

"The defendants were entitled to have the corn weighed and inspected by the receiving quartermaster at Cairo, and if it did not pass his inspection to throw it back upon the claimant; but, while it was in their custody and under their control, they were bound to exercise over it ordinary care; and they were also bound to have it promptly inspected, and, if rejected, to return it to the claimant at Manteno, or at least to immediately notify him of its rejection. Having failed in all of these obligations, they thereby become responsible for its loss; and the claimant should recover the contract price, being also the *quantum valebat* of the entire amount by him delivered, to wit, 18,000 bushels, at $1.30 per bushel, amounting to $23,400."

This bill directs the payment of $21,320 to the claimant as balance due him on the 18,000 bushels of corn delivered to the railroad agents at Manteno, Ill., under the purchase made on April 15, 1865.

The merits of the claim depend chiefly upon the construction to be placed upon the order of April 15, 1865; and whether or not its terms and attendant circumstances imply a completed purchase of the corn at Manteno, and whether or not the railroad company was at the time of the receipt of the corn at Manteno the agent of the Government.

Captain Currie testified that the corn was purchased subject to delivery and inspection at Cairo. While his order of March 28 did require that, he failed to explain the difference in the language of that and his order of April 15, or why in the latter order, if he did not regard the corn as Government property, he found it necessary to obtain the formal approval of his superior officer, Colonel Myers, for the transportation.

The evidence of the claimant is clear and specific in stating that the sale was made subject to delivery on the cars at Manteno alone. He is supported in his statements by the evidence of Robert Forsythe, the general freight agent of the railroad, who stated that the moment it was received on the cars at Manteno, he considered it Government property, under said order, and looked to the Government for the freight, and that Captain Currie had informed him in St. Louis, before the shipment, that he had made the purchase to be delivered at Manteno, and the freight was to be paid by the Government, and that the Government did pay the freight.

This evidence is supported by that of William R. Arthur, the superintendent of the railroad, and John Remmer, the secretary of the president of said road.

Thomas H. Seymour testified that on June 21, 1865, Captain Currie told him, in the presence of other parties he named, that he had purchased the corn subject to delivery on board the cars at Manteno.

The evidence for the claimant further shows that from 17 to 25 days elapsed between the time of shipment of the corn and its examination at Cairo by the Government officers there.

Your committee is of the opinion that the Court of Claims misconceived the real intent of the act of July 4, 1864, and the official capacity in which Captain Currie was acting. He was not on duty as an assistant quartermaster in the field, attached to any army or detachment, but constituted a part of the quartermaster's purchasing staff of the army, having under his immediate charge the purchase of forage for the department of Missouri, and to supply the supply depot at Cairo, and, therefore, he was not restricted by the rules of law governing quartermasters attached to armies or detachments in the field.

The evidence satisfies your committee that the transaction was an actual completed purchase and sale upon the inspection and delivery of the corn at Manteno; that said inspection was made as required by the act of 1861, and delivery was made to the railroad company there; that said railroad company was then operated and was under the control of the military authorities, and as such its agents were the agents of the Government; that from the date of the delivery of the corn by the claimant at Manteno he never had any supervision or control over the corn; that whatever damage occurred took place while the corn was in the possession of the Government authorities, and that he acted in good faith throughout the entire transaction and should be paid the balance due.

In consideration of all the facts, your committee is of the opinion that this is a just and meritorious claim, and therefore recommends the passage of the bill after amending by striking out the word "Mattoon" in the ninth line and inserting the word "Manteno."

ACTS OF CONGRESS AND DECISIONS OF THE COURTS RELATING TO CONTRACTS.

[12 Stat. L., p. 220, sec. 10.]

[Extract from an act making appropriations for sundry civil expenses of the Government for the year ending June 30, 1862.]

SEC. 10. *And be it further enacted*, That all purchases and contracts for supplies or services in any of the Departments of the Government, except for personal services, when the public exigencies do not require the immediate delivery of the article or articles, or performance of the service, shall be made by advertising a sufficient time previously for proposals respecting the same. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract at the places, and in the manner in which such articles are usually bought and sold, or such services engaged between individuals. No contract or purchase shall hereafter be made, unless the same be authorized by law or be under an appropriation adequate to its fulfilment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year. And the third section of the act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending the thirtieth of June, eighteen hundred and sixty-one," shall be, and the same is hereby, repealed.

Approved, March 2, 1861.

[12 Stat. L., p. 411.]

AN ACT to prevent and punish fraud on the part of officers intrusted with making of contracts for the Government.

Be it enacted, &c., That it shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, immediately after the passage of this act, to cause and require every contract made by them, severally, on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing and signed by the contracting parties with their names at the end thereof, a copy of which shall be filed by the officer making and signing the said contract in the "returns office" of the Department of the Interior (hereinafter established for that purpose) as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, as also a copy of any advertisement he may have published inviting bids, offers, or proposals for the same; all the said copies and papers in relation to each contract to be attached together by a ribbon and seal and numbered in regular order numerically, according to the number of papers composing the whole return.

SEC. 2. *And be it further enacted*, That it shall be the further duty of the said officer, before making his return, according to the first section of this act, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me personally with ——; that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided." And any officer convicted of falsely and corruptly swearing to such affidavit shall be subject to all the pains and penalties now by law inflicted for wilful and corrupt perjury.

SEC. 3. *And be it further enacted*, That any officer making contracts, as aforesaid, and failing or neglecting to make returns of the same, according to the provisions of this act, unless from unavoidable accident and not within his control, shall be deemed, in every case of such failure or neglect, to be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and be imprisoned for not more than six months, at the discretion of the court trying the same.

SEC. 4. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, immediately after the passage of this act, to provide a fit and proper apartment in his Department, to be called the "Returns Office," within which to file the returns required by this act to be filed, and to appoint a clerk to attend to the same, who shall be entitled to an annual salary of twelve hundred dollars, and whose duty it shall be to file all returns made to said office, so that the same may be of easy access, filing all returns made by the same officer in the same place and numbering them as they are made in numerical order. He shall also provide and keep an index book, with the names of the contracting parties, and the number of each and every

contract opposite to the said names; and he shall submit the said index book and returns to any person desiring to inspect the same; and he shall also furnish copies of said returns to any person paying for said copies to said clerk, at the rate of five cents for every one hundred words, to which said copies certificates shall be appended in every case by the clerk making the same, attesting their correctness, and that each copy so certified is a full and complete copy of said return; which return, so certified under the seal of the Department, shall be evidence in all prosecutions under this act.

SEC. 5. *And be it further enacted*, That it shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, immediately after the passage of this act, to furnish each and every officer severally appointed by them with authority to make contracts on behalf of the Government, with a printed letter of instructions, setting forth the duties of such officer under this act, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required to be affixed thereto, so that all the instruments may be as nearly uniform as possible.

Approved, June 2, 1862.

[12 Stat. L., p. 577.]

AN ACT to prevent members of Congress and officers of the Government of the United States from taking consideration for procuring contracts, office, or place from the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any member of Congress or any officer of the Government of the United States who shall, directly or indirectly, take, receive, or agree to receive, any money, property, or other valuable consideration whatsoever, from any person or persons for procuring, or aiding to procure, any contract, office, or place from the Government of the United States or any department thereof, or from any officer of the United States, for any person or persons whatsoever, or for giving any such contract, office, or place to any person whomsoever, and the person or persons who shall directly or indirectly offer or agree to give, or give or bestow any money, property, or other valuable consideration whatsoever, for the procuring or aiding to procure any contract, office, or place as aforesaid, and any member of Congress who shall directly or indirectly take, receive, or agree to receive any money, property, or other valuable consideration whatsoever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause, or proceeding which may then be pending, or may by law or under the Constitution of the United States be brought before him in his official capacity, or in his place of trust and profit as such member of Congress, shall, for every such offence, be liable to indictment as for a misdemeanor in any court of the United States having jurisdiction thereof, and on conviction thereof shall pay a fine of not exceeding ten thousand dollars, and suffer imprisonment in the penitentiary not exceeding two years, at the discretion of the court trying the same; and any such contract or agreement, as aforesaid, may, at the option of the President of the United States, be absolutely null and void; and any member of Congress or officer of the United States convicted, as aforesaid, shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States.

Approved, July 16, 1862.

[12 Stat. L., p. 596.]

[Extract from an act to define the pay and emoluments of certain officers of the Army, and for other purposes.]

SEC. 13. *And be it further enacted*, That all contracts made for, or orders given for the purchase of, goods or supplies by any department of the Government, shall be promptly reported to Congress by the proper head of such department, if Congress shall at the time be in session, and if not in session, said reports shall be made at the commencement of the next ensuing session.

SEC. 14. *And be it further enacted*, That no contract or order, or any interest therein, shall be transferred by the party or parties to whom such contract or order may be given to any other party or parties, and that any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned: *Provided*, That all rights of action are hereby reserved to the United States for any breach of such contract by the contracting party or parties.

SEC. 15. *And be it further enacted*, That every person who shall furnish supplies of any kind to the Army or Navy shall be required to mark and distinguish the same, with the name or names of the contractors so furnishing said supplies, in such man-

ner as the Secretary of War and the Secretary of the Navy may respectively direct, and no supplies of any kind shall be received unless so marked and distinguished.

SEC. 16. *And be it further enacted*, That whenever any contractor for subsistence, clothing, arms, ammunition, munitions of war, and for every description of supplies for the Army or Navy of the United States, shall be found guilty by a court-martial of fraud or wilful neglect of duty, he shall be punished by fine, imprisonment, or such other punishment as the court-martial shall adjudge; and any person who shall contract to furnish supplies of any kind or description for the Army or Navy *he* shall be deemed and taken as a part of the land or naval forces of the United States, for which he shall contract to furnish said supplies, and be subject to the rules and regulations for the government of the land and naval forces of the United States.

Approved, July 7, 1862.

[12 Stat. L., p. 600.]

AN ACT to suspend temporarily the operation of an act entitled "An act to prevent and punish fraud on the part of officers intrusted with making of contracts for the Government," approved June two, eighteen hundred and sixty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the operation of the act entitled "An act to prevent and punish frauds on the part of officers intrusted with making of contracts for the Government," approved June two, eighteen hundred and sixty-two, be, and the same is hereby, suspended until the first Monday of January, eighteen hundred and sixty-three.

Approved, July 17, 1862.

NOTES OF DECISIONS BY THE COURTS.

When the Government enters on a tract of land under a lease, it has no power to relinquish a part of the premises and apportion the rent without the consent of the landlord. And when its agent gives notice to the landlord that after that date the Government will cease to occupy a part of the tract specially designated, and it does surrender the same, though without acceptance by the landlord, it continues liable for the entire rent so long as it occupies any part. (Kugler's Case, 4th C. Cls. R., p. 407.)

A contract made without advertisement for a future supply of wood for the use of the Army is within the prohibition of the act March 2, 1861 (12 Stat. L., p. 220, sec. 10), and is therefore void. A contract made by an assistant quartermaster to meet an exigency is void unless ordered by the commanding general, as provided by the act June 2, 1862 (12 Stat. L., p. 411); McKinney's Case (4 C. Cls. R., p. 537).

A written contract, as required by the act March 2, 1861 (12 Stat. L., p. 220), is not necessary to sustain a recovery where goods have been delivered and used by the Government. There is a distinction between an action on an executory contract to recover damages for nonperformance and one on the implied obligation to pay for articles actually purchased and used by the defendants. Burchiel's Case (4 C. Cls. R., p. 549).

EXECUTIVE DEPARTMENTS.

The Secretary of War is a civil officer, and, therefore, a contract made with him by an officer of the Army is not within the terms of the Army Regulation No. 1002, forbidding contracts to be made by "an officer or agent in the military service with any other person in the military service." Burns's Case (4 C. Cls. R., p. 113).

The War Department has power to dismiss an officer from the service while in captivity, but under the act March 30, 1814 (3 Stat. L., p. 114, sec. 14), his pay, &c., are, during his captivity, to be allowed to him. (Lieutenant Jones's Case, p. 197, 4 Court of Claims.)

An officer who did not violate his duty willfully nor intentionally at the time of his capture, and whose conduct then was an indiscretion and not an offense, and who on his exchange demanded a court of inquiry and was refused, is entitled to his pay and allowances under the act March 30, 1814 (3 Stat. L., p. 114, sec. 14), notwithstanding that he was dismissed the service by the War Department during his captivity. (Id., p. 197.)

A contract made by a surgeon and medical purveyor of a military department of the United States, with parties for furnishing ice, for the use of the sick and wounded in the hospitals of the United States in 1864, was invalid until approved by the Secretary of War. Without such approval the surgeon could not bind the United States in any way.

A contract thus approved being executed by the other parties, superseded a previous contract signed by the surgeon, although the latter conformed strictly to proposals made by the parties, and accepted by the surgeon. (Parish et al. *v.* The United States, 8 Wallace, p. 489.)

When an individual who has been absolved from a contract of the Government to receive and pay for certain articles which it had agreed to purchase, by the refusal of the proper officer to receive the articles when tendered, afterwards consents to deliver them under a threat of the officer that he will withhold money justly due to the plaintiff, he can only recover the contract price, whatever may have been the current market value of the articles. (Gibbons *v.* The United States, 8 Wallace, p. 269.)

The act "to prevent and punish fraud on the part of officers intrusted with making contracts for the Government," June 2, 1862 (12 Stat. L., p. 411), which makes it "the duty" of the Secretaries of the War, Navy, and Interior Departments "to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof," and which makes it the duty of the contracting officers to return such contracts to the "returns office" with the advertisement and proposals of parties and an affidavit as to the regularity and integrity of his acts, is mandatory upon the parties, and not merely directory to the officers of the Government, although the act does not declare verbal contracts void and does prescribe a penalty for the officer failing to make a proper return. The law having required such contracts to be reduced to writing makes it as much the duty of the contractor as of the officer to see that this requirement is fulfilled. (Henderson's Case, 4 C. Cls. R., p. 75.)

Since the act July 4, 1864 (13 Stat. L., p. 394, sec. 4) (which provides that "when an emergency shall exist requiring the immediate procurement of supplies" for an army or detachment which can not be procured in the ordinary way, "then it shall be lawful for the commissary officer of such army or detachment to order the chief quartermaster" to procure them "during the continuance of such emergency, but no longer, in the most expeditious manner and without advertisement"), the power to declare an "emergency" or "exigency" is vested exclusively in the commanding officer; and an executory contract to supply an army with wood, authorized by the chief quartermaster of a military department and without previous advertisement and without the express order of the Commissary-General, is void, under the act March 2, 1861 (12 Stat. L., p. 220, sec. 10), which provides that "all purchases and contracts, when the public service does not require the immediate delivery of the article or articles, or performance of the service, shall be made by advertising a sufficient time previously for proposals." (Ibid.)

A Government contractor has a right to perform by ordinary business methods, provided he does not assign his contract. He may make subcontracts. (Stout, Hall & Bangs *v.* The United States, 27 C. Cls. R., p. 385.)

A parol contract entered into by a quartermaster without previous advertisement and without an exigency declared by the commanding officer is void. The Government is liable under such a contract only for the goods actually used, and not for such as are spoiled while in the hands of its agents, nor for such as its quartermasters may accept, if not subsequently used. To create liability the goods must be received and used. (Charles H. Adams *v.* The United States, 7 C. Cls. R., p. 437.)

If, by the terms of a contract, army supplies are to be delivered by the contractor in Arizona, the property does not vest in the Government until delivery, notwithstanding an inspection and approval in New York before shipment. The inspection does not work a change of title in the property, and its being before shipment instead of after delivery, is to the advantage of the contractor. (William S. Grant *v.* The United States, 7 C. Cls. R., p. 53.)

When property is destroyed by accident in transitu, the party in whom the property is must bear the loss, and the Government is not bound to indemnify a contractor where the property is destroyed in transitu by the public enemy. (Ibid.)

INSPECTION.

At the place of shipping instead of at the place of delivery, by the officers of the United States, of supplies which a contractor has agreed to deliver at a distant point, does not pass the property to the United States so as to relieve the contractor from his obligation to deliver at such point.

Where a contract with the Government to furnish to it supplies does not stipulate for an inspection at a place earlier than the place of delivery, it is optional with the contractor whether he will have the goods inspected at such earlier place.

Where a delay by the Government in making an inspection of supplies, agreed to be made at the place of shipping instead of at the place of delivery, is not the proximate cause of a loss of the supplies afterwards suffered, the loss must be borne by

the party in wnom the title to the supplies is vested; and, if still in the contractor, by him. This rule applies even where supplies have been seized by the public enemy without any default of the owner. (Grant *v.* The United States, 7 Wallace, p. 331.)

An officer of volunteers neither mustered into the United States service nor specially empowered to make contracts for subsisting his troops can not bind the defendants by express contract; nor are vouchers given by him evidence to bind the Government. (Kirkham and Brown's Case, 4 C. Cls. R., p. 223.)

Where there is no valid express contract, a payment received and receipt given, without objection or protest, are conclusive upon the contractor. (Ibid., p. 223.)

A payment made under a contract is proof of performance, though the agreement itself call for other evidence of the fact. (Freeman *v.* United States, 3 N. & H., 272.)

There is no contract binding on the Government until acceptance of the claimant's bid, though the acceptance of it be recommended by the Quartermaster-General. (Strong *v.* United States, 6 N. & H., 135.)

Where a contract provides for the approval of the Quartermaster-General, such approval, when once exercised, can not be withdrawn. (Wilder *v.* United States, 5 N. & H., 468.)

A written contract is not necessary to sustain a recovery against the Government for goods sold and actually delivered and used. (Burchiel *v.* United States, 4 N. & H., 549; Danold *v.* United States, 5 Ibid., 65.)

Since the acts June 2, 1862 (12 Stat. L., p. 411), and July 17, 1862 (Id., p. 600), "every contract" made by the Secretaries of War, of the Navy, or of the Interior Departments, or by their officers under them, must be "reduced to writing, and signed by the contracting parties;" or, as an executory contract, it will be void. Charles A. Danolds *v.* The United States, (5 C. Cls. R., p. 65.)

An unwritten agreement, executory in its nature, but invalid under the act June 2, 1862 (12 Stat. L., p. 411), because not in writing and signed by the parties, may receive a legal ratification from the acts of the parties. Faithful performance by the contractor and a benefit received by the Government will take the case out of the statute so far as to leave it within the equitable rule of implied contracts. (Id., p. 65.)

Where the ratification of an agreement, made by an agent without authority, depends upon the defendants having received certain property, and having paid the stipulated price, the burden of proof is on the claimant. It is not sufficient for him to show simply that they did receive the property; he must also show the price paid. (Id., p. 65.)

If a government contract be assigned, in violation of the act of 1862, it becomes null and void; and no action will lie on it, either by the assignor or assignee. (Wanless *v.* United States, 6 N. & H., 123).

The act 2 June, 1862 (12 Stat. L., p. 411), is mandatory upon the parties; the law having required public contracts to be reduced to writing, it is as much the duty of the contractor as of the officer to see that this duty is fulfilled. (Henderson *v.* United States, 4 N. & H., 75; Lindsley *v.* United States, ibid., 359; Danold *v.* United States, 5 ibid., 65; S. C. 6 ibid., 71.)

No alteration or change in a valid contract can be made by one party without the consent of the other, express or implied; but where an alteration is made by one party, retroactive in its character, and the other, with knowledge of the nature and extent of the alteration, fails to protest against it, to any one having competent authority to act in the premises, and executes receipts in full for a series of settlements, in accordance with the contract so altered, without complaint, he will be deemed to have ratified and assented to the alterations of the original contract. (Martin *v.* United States, 5 N. & H., 216; and see Dougherty *v.* United States, ibid. 108; Crary *v.* United States, ibid., 231; Thorne *v.* United States, ibid., 242; Sweeney *v.* United States, ibid., 285; Wilcox *v.* United States, ibid., 386.)

The adoption of a new rule for the inspection of Government horses, if a reasonable one for the purpose of guarding against frauds, is no breach on the part of the Government of a prior contract. (United States *v.* Wormer, 13 Wall., 25; reversing S. C. 4 N. & H., 258; Smoot *v.* United States, 15 Wall., 36; reversing S. C. 5 N. & H., 490; and affirming Spicer *v.* United States, 1 N. & H., 316; and see Kerchner *v.* United States, 7 N. & H., 579.)

No action can be maintained on a contract the consideration of which is prohibited by law. (Martin *v.* Bartow Iron Works, 35 Geo., 320; Lanham *v.* Patterson, 13 Int. R. Rec., 142; The Pioneer, 1 Deady, 72.)

A contract to do an act forbidden by law is void, and can not be enforced in a court of justice. (Dill *v.* Ellicott, Tan. Dec., 233.)

Where a contract is positively forbidden by law, the parties being in pari delicto, no action can be maintained on it in a court of law. (Thomas *v.* Richmond, 12 Wall., 349.)

A contract made with a public enemy during a state of war can not be enforced after its termination. (Phillips *v.* Hatch, 4 West. Jur., 399.)

A transaction originally unlawful, such as a person's unlawful trading in behalf of another with a public enemy, can not be made lawful by any ratification. (United States *v.* Grossmayer, 9 Wall., 72.)

Any contract tinctured with the vice of giving aid and support to the rebellion is void: thus, due-bills given for goods sold for the use of the insurgent government are not a good consideration in part for a promissory note; the entire note is invalid. (Hanauer *v.* Doane, 12 Wall., 342.)

A contract on behalf of the Government, approved by the Secretary of War, with an officer of the Army, is not illegal, under the Army Regulations; the Secretary, though head of the Department, not being in the military service. (United States *v.* Burns, 12 Wall., 246.)

No action will lie against the Government for the breach of a contract which has been assigned in violation of the act of 1862; but if there have been a delivery and acceptance of goods, under the contract, an action on a quantum meruit may be maintained, in the name of the contractor, for the use of the assignee. (Wheeler *v.* United States, 5 N. & H., 504.)

Where a commanding general, in a military emergency, orders the purchase of a limited number of horses, within a brief, prescribed time, at an unusually high price, to be inspected by a board of officers, and the contractor complies with all the conditions, the sale is valid, and the Quartermaster-General has no power to reduce the price. (Wilcox *v.* United States, 5 N. & H., 386.)

OF PASSING THE TITLE BY DELIVERY—RULE OF THE CIVIL LAW.

When the terms of sale are agreed on, and the bargain is struck, and everything that the seller has to do with the goods is complete, the contract of sale becomes absolute between the parties without actual payment or delivery, and the property and the risk of accident to the goods rest in the buyer. (Kent Com., vol. 2, p. 492, 12th ed., and numerous authorities there cited.)

Heineccius, in his excellent treatise on the law of nature, says that the risk of the thing purchased after the bargain is completed, though without delivery, ought to fall on the buyer in cases free from fault or delay on the part of the seller, quia emptor jure naturæ sine traditione sit dominus. (Jur. Nat. et Gentium, 6, 1, c. 17, sec. 353.)

Marking the parcels in the store of the warehouseman with the initials of the name of the purchaser is a delivery. (3 Caines, 182.)

The change of mark on bales of goods in a warehouse by direction of the parties operates as a delivery of the goods. (Lord Ellenborough, 14 East., 312.)

The selecting and marking of sheep in the possession of the vendor, who retains possession for the vendee, is a sufficient delivery to complete the sale and pass the property. (2 Vermont, 374.)

If no place be designated by the contract the general rule is that the articles are to be delivered at the place where they are at the time of the sale. (Kent. Com., vol. 2, p. 505, etc.)

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